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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1084 OF 2004

United India Insurance Co.
Limited and another — Appellants
versus
Smt.Sunita Sunil Sonawane & ors. — Respondents

ALONG WITH
FIRST APPEAL (STAMP) NO.27170 OF 2004

United India Insurance Co.Ltd. — Appellants
versus
vikram Ashorba Ambore & ors. — Respondents

ALONG WITH
FIRST APPEAL (STAMP) NO.18128 OF 2004

United India Insurance Co.Ltd. — Appellants
versus
Mandabai Chintaman Kedare & ors. — Respondents

Mr.Saumen S. Vidyarthi i/by A.S.Vidyarthi for appellants.
Mr.S.P.Thorat for respondents 1 to 3.

CORAM : A.S.OKA, J.

DATE : 09th March 2007

PC :

1. These appeals can conveniently be decided by a common judgement as the appeals arise out of claim petitions filed under section 166 of the Motor Vehicles Act, 1988 arising out of the same

accident. The appellant Insurance Company is the Insurer of the Truck Trailer involved in the accident. The Tribunal has held that the accident occurred due to rash and negligent driving of the truck trailer by the original opponent no.1. The Tribunal held that the appellant Insurer was liable to satisfy the award made against the Insured.

2. The challenge in these appeals is on the ground that on the date of the accident, the truck trailer was not insured with the appellant. The appellant issued a cover note of insurance for the period from 2nd April 1996 to 1st April 1997. A cheque dated 2nd April 1996 was issued by the Insured towards premium amount. The said cheque was dishonoured. By letter dated 6th June 1997, the appellant informed the insured that the cover note stood cancelled from its inception. The accident has occurred on 27th October 1996.

3. The learned Member of the Tribunal had held that on the day on which the cover note was issued, it was valid till 1st April 1997 and, therefore, so far as third parties are concerned, the Insurance Company is liable.

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4. The learned advocate for the appellant submitted that on the date on which the accident occurred, the cover note was already cancelled and the owner/insured was informed accordingly. He, therefore, submitted that the Insurance Company was not liable as on the date of the accident there was no valid insurance.

5. I have considered the submissions. It will be necessary to refer to a decision of the learned Single Judge of this Court in the case of Oriental Insurance Company Ltd. V/s Prakash Chunilal and others (2006-ACJ-15). In the said case before the learned Single Judge of this Court, the policy of insurance was issued for the period from 16th October 1981 to 15th October 1982. The cheque issued by the insured towards the premium was dishonoured and the insurance company made endorsement of cancellation on 19th November 1981. The vehicle met with an accident on 25th November 1981. The question arose whether the insurance company was liable to honour the award though on the date of accident, the policy was already cancelled. This Court referred to the decision of the Apex Court in the case of Oriental Insurance Company Limited Vs. Inderjit Kaur and others (1998-ACJ-123). In

paragraph no.6 of its decision, this Court held as under:-

> "6. ... ... The factual distinction in the present case is that the accident took place on 25.11.1981 after the insurance company had purported to endorse a cancellation of the insurance policy on 19.11.1991 on the ground of the dishonour of the cheque. This to my mind would not make any difference to the position as it obtained at least under the Act of 1939. Section 105 of the Act of 1939 enunciated that where a policy of insurance is cancelled, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded. The object of this provision is obvious. Section 94 of the Act contained a specific prohibition on the use of a motor vehicle unless there is in force a policy of insurance complying with the provisions of the Chapter. The provisions of section 96(1) which correspond to the provisions of Section 149(1) of the Motor Vehicles Act, 1988, have already been noted. Sub-section (2) of section 96 of the Act of 1939 enabled the insurer to defend the action against him on certain specified grounds. Clause (a) thereof was that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to any liability or that either before or not later than 14 days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105. The requirement that the insurer must notify the registering authority under section 105 was, therefore, tied up with the defence which was available to the insurer under section 96(2) that he had either before or within 14 days of the

> accident, commenced proceedings for the cancellation of the contract of insurance after notice as contemplated in section 105. In the present case, the admitted position is that neither was any notice given to the registering authority under section 105 nor were any proceedings for cancellation after such notice adopted. That being the position, the liability of the insurer cannot stand excluded."

6. In the case of Oriental Insurance Company Limited (supra) the Apex Court held that the policy of insurance issued by the insurance company was a representation upon which the authorities and third parties were entitled to act. It was held that the insurance company was not absolved of its obligation in respect of third parties under the policy because it did not receive the premium. The Apex Court observed that the remedy available to the insurance company was against the insured. The Apex Court further held that the public interest that a policy of insurance serves must, clearly, prevail over the interest of the insurance company. In view of the law laid down by the Apex Court, the submissions made by the learned advocate for the appellants cannot be accepted. However, it will be open for the appellants to recover the compensation amounts from the insured.

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7. Subject to what is observed above, the appeals are dismissed with no orders as to costs.

(A.S.OKA, J.)